



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TJR

Docket No: 6090-98

5 April 1999

[REDACTED]

Dear [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 30 March 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by the Military Law Branch and Promotions Branch, Headquarters, Marine Corps, copies of which are attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this regard, the Board substantially concurred with the comments contained in the advisory opinions.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:
140073
MMPR-2
28 Jan 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: ADVISORY OPINION IN THE CASE OF [REDACTED]

Ref: (a) Memo 1070 JAM4 of 17 Dec 98 to BCNR
(b) MCO P1400.32 B

1. [REDACTED] requested remedial consideration for promotion to the rank of staff sergeant after the removal from his record the nonjudicial punishment (NJP) that was imposed on 24 September 1997.
2. Per reference (a), there have not been any changes to Sergeant Davis's record book, therefore his request should not be granted per reference (b).
3. Recommend his petition be denied.

RICHARD B. FITZWATER
Assistant Head, Enlisted Promotions
Promotion Branch
By direction of
the Commandant of the Marine Corps



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1775

IN REPLY REFER TO:

1070
JAM4

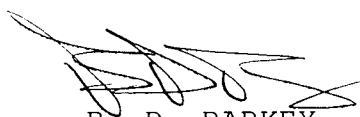
17 DEC 1998

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION
IN THE CASE OF ~~XXXXXXXXXXXXXXXXXXXX~~
~~XXXXXXXXXXXX~~ 88/2532 U.S. MARINE CORPS

Ref: (a) Manual for Courts-Martial, United States (1995
Edition), Part V

1. We are asked to provide an opinion regarding Petitioner's request that his nonjudicial punishment (NJP) of 24 September 1997, be set aside.
2. We recommend that relief be denied. Our analysis follows.
3. Petitioner argues that the punishment he received in this case was disproportionate to the offense committed because his name was subsequently removed from the staff sergeant selection list. Petitioner's argument is without merit.
4. Under the reference, the NJP authority may impose punishment when he believes the preponderance of the evidence establishes the accused committed the offense charged. Absent clear evidence of an abuse of discretion, the NJP authority's findings should remain undisturbed. Petitioner does not dispute the events that led to his NJP, nor did Petitioner choose to appeal the NJP. Additionally, the punishment Petitioner received was well within legal limits. Petitioner's removal from a promotion list is not a punishment, but rather an exercise of discretion on the part of the Commandant of the Marine Corps.
5. I find that Petitioner has failed to demonstrate that the NJP authority abused his discretion in any way. Accordingly, I recommend that relief be denied.


B. D. BARKEY
Major, U.S. Marine Corps
Assistant Head
Military Law Branch
Judge Advocate Division